

Now there can be no doubt that on an application of this kind the Court must be satisfied that the application is not frivolous or vexatious and that the applicant has merits. As regards the first point, this is an application by a Government officer who with the consent of the Colonial Secretary in accordance with the provisions of Ordinance No. 44 (Bankruptcy) has taken legal advice and as a result has come to the conclusion that it is in the interest of the creditors whom he represents that this application should be made. The application therefore is certainly not frivolous or vexatious and indeed the defendants have not suggested that it is. As regards the applicant having merits, I take this to mean that the applicant must satisfy the Court that he has a reasonable prospect of success or at all events has a substantial case which he desires to try (see *per* Cockburn C.J. in *Watt v. Barnett*, 3 Q.B.D. p. 183 at p. 185), and accordingly, when an application is made under the circumstances stated above, the Court will only refuse it if satisfied that the action, if restored, cannot possibly succeed. I do not think that it is necessary for the Court on this application to come to a definite finding on the merits of the defence upon which the defendants principally rely. It is sufficient if I point out that the exact conditions which have arisen in this case have not arisen in any of the reported cases. On the one hand the policy in question is identical in terms with the policy in the case of *Jureidine v. Mutual British & Irish Millers Insurance Co., Ltd.*, [1915] App. Cas. p. 499. In that case, however, the defendants repudiated all liability under the policy before the proceedings commenced. Here it is argued that the forfeiture of all benefits was only pleaded in the defence and that this distinguishes the case cited. Again, the defendants rely on the authority of *Woodall v. Pearl Assurance Co.*, [1919] 1 K.B. p. 593; *Trainor v. The Phoenix Fire Assurance Co.*, 65 L.T. p. 825, and on the leading case of *Scott v. Avery*, 5 H.L.C. p. 8, 11; but in all these cases the arbitration clause covered both quantum and liability and therefore these cases are not *in pari materia*. I am therefore by no means satisfied that the defence set up in the present case is certain to succeed, and I think that the applicant should be given the opportunity of testing it.

As regards the defendants' third objection, I find it rather difficult to follow. The defendants after judgment paid a certain sum to mortgagees whose interest was indorsed on the policy. They say they would not have paid anything before the judgment in their favour, as this would have been an admission of liability. This may be so, but when they were clearly under no liability at all unless the mortgagees started proceedings. The payment was therefore a purely voluntary payment for which the conduct of the plaintiff cannot be held responsible.

Another argument was that the applicant actually threatens to jettison such part of the plaintiff's claim as he thinks not to be maintainable. The defendants accordingly, or their solicitor, feel aggrieved. On the case as originally presented the defendants felt confident that on the issue of a valued policy they must have succeeded, probably with costs, and now they

A are going to be deprived of this highly desirable consummation. The answer is that they are under no obligation to defend the case if they do not think that they are likely to be successful. I cannot take this submission very seriously.

B I think, therefore, that an order should be made setting aside upon terms the judgment entered on the 4th December, 1933. I think that the applicant should apply to be substituted as plaintiff and to make such amendments to the [241] statement of claim as he may be advised, and I make no order as to any such amendment on this application. It has been arranged that the terms upon which the judgment is to be set aside shall be argued before me in Chambers. [241]

C Judgment set aside.

Solicitors: Allen & Gledhill; Braddell Bros.

Re A SOLICITOR

D [O.C.J. (Whitley Ag. C.J., Mills and Adrian Clark JJ.)
May 14, 1936]

[Singapore Originating Motion No. 7 of 1936]

Advocates and Solicitors Ordinance, 1934 — Criminal Breach of Trust.

Where a solicitor has been convicted of actual dishonesty such as misappropriation of money to his own use he ought to be struck off the rolls and not merely suspended.

E MOTION.

Eber and Withers-Payne for the Singapore Bar Committee.

Knowles for the advocate and solicitor concerned.

F The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

The judgment of the Court was as follows:—

G Whitley Ag. C.J.: This was an application by the Singapore Bar Committee that the advocate and solicitor be struck off the roll of this Court. The application was made by originating motion under section 26 of the Advocates and Solicitors Ordinance, 1934 as amended by the Advocates and Solicitors (Amendment) Ordinance, 1936. The solicitor was ordered to show cause under section 26D and on the showing of cause was represented by counsel.

H From the affidavit filed by the Bar Committee in support of the motion it appeared that the solicitor was on the 29th day of November, 1935 convicted before the District Court, Singapore, on a charge of having committed criminal breach of trust with respect to a sum of \$302.69, an offence punishable under section 406 of the Penal Code. He was sentenced to pay a fine of \$80 or in default to two months' imprisonment. Against this conviction he appealed to the High Court and his appeal was dismissed.

I The only question which we had to consider was whether he be struck off the roll or whether a period of suspension from practice would be sufficient punishment. We were unanimously of the opinion that our order should be that he be struck off the roll for the following reasons.

The money in respect of which he committed the breach of trust was the money of a client which came into his hands by virtue of his employment as that client's solicitor. From the evidence of the client, which was accepted by the learned District Judge, it appeared that the client engaged the solicitor to apply for letters of administration to the estate of his deceased father and brother in order that the client might obtain payment from the Official Assignee of \$2,128.50 due to the estate of his father. On the 7th November, 1934, the solicitor received this sum from the Official Assignee and paid it into his own bank account. He did not keep a separate account for clients' money. On and before the 26th November, 1934, the solicitor paid to the client various sums out of this money and on that date \$1,000 remained in his hands due to the client. On that date the solicitor's bank account shewed a credit balance of \$697.31 being \$302.69 short of the amount due to the client. The client applied for the balance due but was told that the solicitor had no money with which to pay him. It was in respect of this shortage of \$302.69 that the solicitor was found guilty of criminal breach of trust. The client wished to go to Sarawak to start business there but was unable to do so as he could not obtain his money from the solicitor. By means of threats that he would report him to the Bar Committee he persuaded the solicitor to hand over various sums but when the trial before the District Court commenced on the 11th October, 1935, \$410 out of this money still remained unpaid.

It was thus clear that the solicitor had used for his own purposes money of his client which had come into his hands in his capacity as that client's solicitor and that he had been unable to pay over that money when requested so to do.

We were of opinion that conduct such as this constituted the most serious type of offence which a solicitor can commit in pursuance of his profession. The application of the Bar Committee was based upon section 25(1), (2)(a) and (2)(b) of the Advocates and Solicitors Ordinance. We were satisfied that due cause was shown why the solicitor should be struck off the roll under both of those sub-sections in that he had (a) been convicted of a criminal offence implying a defect of character which unfitted him for his profession and (b) had been guilty of grossly improper conduct in the discharge of his professional duty.

We were referred to a number of English decisions. From the judgment of Wills J. in *In re a Solicitor*, [1894] 1 Q.B. at p. 259 it would appear that where a solicitor has been convicted of actual dishonesty in the shape of anything like misappropriation of money to his own use he ought to be struck off the rolls but that where his professional misconduct does not amount to such dishonesty it may be sufficient punishment merely to order him to undergo suspension. The principle upon which punishment in such cases should proceed was also discussed in the judgments of the Court of Appeal in *In re a Solicitor*, 5 T.L.R. 486. Lord Coleridge L.C.J. observed that "it could not be laid down [242] as an absolute rule that a conviction for felony must always cause a solicitor to be struck

off the rolls. The circumstances of each conviction must be considered by the Court. There were some felonies, no doubt, which were infinitely disgraceful; there were others which an honourable man might commit without suffering any stain to his honour. No doubt punishment must follow on every conviction, because the law must be vindicated; but it might well happen that a man who had been convicted of such a felony would not be unfit to associate with his fellow-men or to be trusted with their money or their confidence." Lord Justice Lindley also protested against the proposition that whenever a solicitor was convicted for felony, he must, as a matter of course, be struck off the rolls. He went on to say: "Instances might easily be given of felonies which would not justify such a course. Here, however, the felony was one affecting the trustworthiness of the solicitor, and if, when the matter first came before the Chief Justice and Mr. Justice Manisty, he had been a member of the Court, he would have thought, on the facts, that the solicitor ought not to have remained on the rolls." That was a case in which it appeared that the solicitor had applied various sums of money to his own use but when the first application to strike him off was made to the Divisional Court he had not been prosecuted and on his undertaking to make restitution he was merely suspended.

Whilst, however, being satisfied that this was a case in which we ought to order the solicitor to be struck off the roll we felt it proper to intimate that in our opinion this order should not preclude him under suitable circumstances and after the lapse of a suitable period from applying to the Court under section 26G of the Ordinance to have his name replaced on the roll. We made this intimation in view of (a) the youth and inexperience of the solicitor, (b) the fact that it was an isolated offence and (c) the fact that, before conviction, restitution had been made in full.

The solicitor had been called to the Bar in England but had never practised there nor read in the Chambers of any member of the Bar. On arriving in this Colony he had immediately set up in practice by himself as an advocate and solicitor of this Court without any previous experience in the office of any local firm of solicitors and without any knowledge of book-keeping or experience in the keeping of clients' account. In the judgment of the learned District Judge who tried the solicitor the following passage occurs: "I suspect that both Ng Poh Hok (the client) and accused were to some extent the catspaws of Lee Song Chua. I do not think accused planned deliberately to deprive Ng Poh Hok of his money and I have dealt leniently with him." It is unfortunately the fact that the solicitors of this Colony, owing to difficulties of language and especially if they themselves are inexperienced, are in many cases to an undesirably large extent at the mercy of and in the hands of their clerks. Lee Song Chua, the clerk of this solicitor, we were informed, has recently also been convicted of criminal misappropriation.

While we did not think that these considerations warranted us in making any order save an order that this solicitor be struck off the roll and while we in no

way wished to prejudge any application for reinstatement that might eventually be made we felt this was a cause in which, if he is allowed to retain his qualification as a member of the Bar in England, it was not impossible that this solicitor might one day be re-admitted to practise in this Colony.

In addition to the order striking him off the roll of this Court we made an order that the costs of the Bar Committee should be paid by the respondent.

WONG YEW v. SHAIK SALLIM BIN MOHAMED BIN SALLIM BIN TALIB

[Workmen's Compensation (Williams, Commissioner)
August 19, 1936]

[Singapore Workmen's Compensation. Claim 29 of 1936]

Workmen's Compensation Ordinance, 1932, s.15.

Held: following *Bargewell v. Daniel* [1907] 98 L.T. 265, that repairs carried out for a landlord to one of his houses are not carried out in the course of and for the purposes of his trade or business and that in such circumstances the landlord is not a "principal" under section 15 of the Workmen's Compensation Ordinance, 1932.

Oakeley (Assistant Controller of Labour) for the applicant.

Seth for the respondent.

E. B. Williams, Commissioner: The facts in this case (which is a disputed claim under the Workmen's Compensation Ordinance, 1932) insofar as it is necessary to consider them for the purposes of this judgment, are not in dispute. The respondent is an absentee landlord owning a number of houses in Singapore, including No. 137 Amoy Street. Certain repairs being required to the roof of the latter house, the respondent's agent employed the witness, Ng Cheong to do the repairs. The verbal agreement between the respondent's agent and Ng Cheong was that Ng Cheong should find the necessary labour and that payment should be made to Ng Cheong, on the basis of the number of men employed on the work at the rate of \$1 *per diem* for masons and 65 cents *per diem* for other labourers. The applicant who was represented at the hearing by Mr. Oakeley, Assistant Controller of Labour, Chinese, was one of the workmen engaged by Ng [243] Cheong to work on the house. On the 27th January, 1936 he fell from the roof and was seriously injured.

At the beginning of the hearing I settled certain issues of which in view of the evidence given it is only necessary to mention two, viz.:

- (a) was the applicant in the employ of the respondent?
- (b) could the respondent be made liable under section 15 of the Ordinance?

Mr. Oakeley only called two witnesses, the applicant and Ng Cheong. On the first issue Mr. Oakeley had pleaded that the applicant was in the employ of the respondent but this plea was not borne out by the evidence. Both the applicant and Ng Cheong and I was able to hold without calling on the defence that

A there was no contractual relation between the applicant and the defendant and that as a question of fact the applicant was not in the employ of the respondent.

The second issue as to section 15 of the Ordinance was not pleaded but was raised by me without protest from the respondent's counsel, Mr. Seth.

B It appeared to me clear on reading section 15 of the Ordinance that the respondent could not be held to be liable unless the work of repairing the house was being undertaken "in the course of or for the purposes of his trade or business." Now these same words "for the purposes of his trade or business" appear as part of the definition of workman in section 2 of the Ordinance exception (a) and also in paragraph (b) of section 3(2) of the Workmen's Compensation Act, 1925 (15 and 16 Geo. 5 c. 84). Under this paragraph 3(2)(b) of the English Act in *Bargewell v. Daniel*, [1907] 98 L.T. 257, where a widow owned a number of cottages and a man who was employed casually to do repairs sustained an accident, it was held that the widow was not carrying on a trade or business. I was of opinion that this case was binding on me in regard to the interpretation of the words "for the purposes of his trade or business" in section 15 of our Ordinance and I accordingly held that the repairs were not done in the course of or for the purposes of the respondent's trade or business and that respondent was not a "principal" under section 15.

E I therefore dismissed the claim without prejudice to any proceedings which the applicant might see fit to take against Ng Cheong. I made no order as to costs.

Claim dismissed.

Solicitors: Sisson & Delay.

REX v. KHOO KEE THYE & ORS.

[A. Cr. J. (Gordon-Smith J.) August 26, 1936]

[Penang Criminal Appeal No. 13 of 1936]

Criminal Procedure Code, s.310 — Reservation of Points of Law — Ordinance No. 45 (Common Gaming Houses), s.5(c) — Selling lottery tickets.

G It is usual where a plea of guilty is accepted by a Magistrate to record some information (which may or may not amount to formal evidence) to show that the punishment inflicted is deserved; at least unless in a petty or trivial case.

SPECIAL CASE.

W. C. Taylor (Deputy Public Prosecutor) for the Crown.

H The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

Gordon-Smith J.: This was a special case stated by the Magistrate, Penang, under the provisions of section 310 of the Criminal Procedure Code, with the object of ascertaining the extent to which evidence need be taken by a lower Court when a plea of guilty has been accepted.

I So far as the facts of this case are concerned I am satisfied that the four accused understood the nature and consequences of their respective pleas of guilty and intended to admit without qualification the offence charged against them.